

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
CITY OF EL SEGUNDO, CALIFORNIA )  
 )  
Informal Request to Modify Stations WPOJ563 )  
and WPMN535, licensed to the South Bay )  
Regional Public Communications Authority, )  
Los Angeles, California area )

**ORDER**

**Adopted: January 10, 2002**

**Released: January 14, 2002**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On June 1, 2001, the City of El Segundo, California (El Segundo) filed a petition (Petition) requesting modification of the authorizations for Stations WPOJ563 and WPMN535, Los Angeles, California, licensed to the South Bay Regional Public Communications Authority (South Bay Authority or Authority).<sup>1</sup> Specifically, the Petition seeks to have two frequency pairs deleted from the aforementioned South Bay authorizations and thereafter “relicensed” to El Segundo.<sup>2</sup> For the reasons discussed herein, the Petition is denied.

2. *Background.* The South Bay Authority is a regional consortium providing public safety communications services to municipalities bordering on and near Santa Monica Bay, California, south of the City of Santa Monica and Los Angeles International Airport.<sup>3</sup> In July 1998, the Commission granted South Bay Authority’s request under Section 337(c) of the Communications Act of 1934, as amended (Section 337 request),<sup>4</sup> to operate on four frequency pairs—namely 470/473.0125; 470/473.0375; 506/509.0125 and 506/509.0375.<sup>5</sup>

3. On June 1, 2001, El Segundo filed the Petition requesting that two of four frequency pairs be deleted from the Authority’s licenses and assigned to El Segundo.<sup>6</sup> El Segundo states that it was a member of the South Bay Authority from its 1975 inception until it voluntarily withdrew its membership

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<sup>1</sup> The City of El Segundo, California Petition to Relicense Frequency Assignments (filed June 1, 2001) (Petition).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> South Bay Regional Public Communications Authority Opposition to Petition to Relicense Frequency Assignments at 1 (filed June 14, 2001) (Opposition).

<sup>4</sup> 47 U.S.C. § 337(c) (upon application by public safety entity, “the Commission shall waive any requirement of this Act or its regulations . . . (other than [interference] regulations) . . . to permit the use of unassigned frequencies . . .” if the Commission finds that five enumerated criteria are met).

<sup>5</sup> See License Communications Services, Inc., South Bay Regional Public Communications Authority and Paging Systems, Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 23781, 23795-99 ¶¶ 31-42 (1998) (*South Bay MO&O*).

<sup>6</sup> See *supra* note 1.

therefrom on June 30, 2000.<sup>7</sup> In this connection, El Segundo contends that the Commission granted the Authority's Section 337 request based in large part on the communication needs of El Segundo. In light of El Segundo's subsequent departure, the Petition avers that the Authority no longer has a legitimate need to employ all of the frequency assignments for which it is licensed. Thus, the Petition contends that we should assign two of the four channel pairs currently licensed to the Authority to El Segundo because the Authority has refused to do so.<sup>8</sup>

4. El Segundo alleges that the South Bay Authority no longer meets the minimum channel loading requirements with respect to Stations WPOJ563 and WPMN535. Specifically, El Segundo asserts that the number of entities served by the Authority has declined and that a Commission investigation will demonstrate that the South Bay Authority no longer requires all of the frequencies for which it is licensed to meet its communications needs.<sup>9</sup> To this end, El Segundo urges the Commission to pursue these allegations via its authority under Section 308(b) of the Communications Act of 1934, as amended (the Act).<sup>10</sup> Further, El Segundo argues that once the modification is made to delete two frequency pairs from the Authority's authorizations, we should then authorize El Segundo to use these frequencies<sup>11</sup> because it was a member of the Authority when the Section 337 request was granted. Moreover, El Segundo states that its public safety communications needs, which are no longer served by the Authority, would be served by such action.<sup>12</sup>

5. On June 14, 2001, the South Bay Authority filed an Opposition to El Segundo's Petition,<sup>13</sup> wherein it reports that its channels are fully loaded and are otherwise operating in compliance with the applicable Commission's Rules.<sup>14</sup> The Opposition identifies the Authority's current members and states that, although El Segundo is no longer a member, the Authority provides public safety communications services for the Gardena, Hawthorne and Manhattan Beach Police Departments and the Manhattan Beach Fire Department.<sup>15</sup> By way of context, the Authority notes that the combined population of these communities is 173,409 and that the average number of calls per month in the year 2000 was 5,964, whereas El Segundo generated a monthly average of 944 calls in 1998 with a population of 16,850.<sup>16</sup> The Authority further states that the frequency pairs 506/509.0125 and 506/509.0375 MHz are used as fire dispatch frequencies<sup>17</sup> and that it also serves the Gardena Police Department and Manhattan Beach Police Department on frequency pairs 470/473.0125 and 470/473.0375 MHz respectively.<sup>18</sup> Additionally, the Authority reports that its current members operate 286 mobile units and 350 portable units on the four channel pairs at issue here.<sup>19</sup> The Authority points out that it also supports

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<sup>7</sup> Petition at 2.

<sup>8</sup> *Id.* at 5-6. El Segundo also contends that it initially facilitated the process by which the Authority acquired the licenses and that, otherwise, it would have applied for two UHF frequency pairs under the same procedures. *Id.*

<sup>9</sup> Petition at 2-4.

<sup>10</sup> *Id.* at 3 citing 47 U.S. C. § 308(b).

<sup>11</sup> *Id.* at 5-6.

<sup>12</sup> *Id.*

<sup>13</sup> *See supra* note 3.

<sup>14</sup> Opposition at 1.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *Id.* The Authority notes that, according to city officials, El Segundo's population is 16,850 as of 2001. *Id.* at n.2.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 6.

specialized law enforcement operations, such as driver license checkpoints and multi-jurisdiction teams involving member jurisdictions as well as nonmember jurisdictions including Hermosa Beach, Redondo Beach, El Segundo, Inglewood, the Los Angeles County Sheriff, Torrance, the California Highway Patrol, the El Camino College Campus Police, and the Palos Verdes Estates Police Department.<sup>20</sup>

6. *Discussion.* As a preliminary matter, we note that El Segundo filed the Petition pursuant to Sections 1.41 and 1.87 of the Commission's Rules.<sup>21</sup> Section 316(a) of the Act allows the Commission to modify a license "if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with."<sup>22</sup> However, the Commission does not have formal procedures recognizing "petitions to modify" submitted by third parties. Rather, we treat such requests as informal requests for Commission action pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41.<sup>23</sup> Accordingly, we are considering the Petition pursuant to Section 1.41 of the Rules.<sup>24</sup>

7. Section 90.313(c) of the Commission's Rules provides that until a private land mobile radio channel in the 470-512 MHz band is fully loaded, it will be available for assignment to other users in the same area.<sup>25</sup> Further, pursuant to Section 90.313(a)(1) of the Commission's Rules, a channel in the 470-512 MHz band for public safety systems is considered fully loaded if 50 units are used on the subject channel pair.<sup>26</sup>

8. In this matter, we find no basis on the record before us for granting El Segundo's Petition. First, based on our review of the record in this matter, we find that El Segundo has not provided sufficient evidence to warrant further Commission inquiry of the Authority's operation of Stations WPOJ563 and WPMN535. Moreover, we find that the allegations raised by El Segundo in the Petition have been sufficiently addressed by the Authority's Opposition. In this connection, we note that the Authority has presented information demonstrating that the four channels targeted by El Segundo are considered fully loaded under Section 90.313(a)(1) of the Commission's Rules at 200 units (50 units per channel). El Segundo's speculation notwithstanding, we are persuaded that the South Bay Authority operates at least 200 units on the four channels (frequency pairs) granted pursuant to the Section 337 request. Nor do we find any reason to doubt the Authority's statement that the use of and demand for its communications services has not declined since the grant of Section 337 request.

9. El Segundo contends that its Petition is not raising contract claims and that we must address this dispute "because it involves an examination of a Commission action which permitted the use

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<sup>20</sup> *Id.* at 2-3. The Authority states that it also regularly provides radio communications service on a contract basis to other jurisdictions in the South Bay area, including the City of Hermosa Beach and the El Camino Community College District. *Id.* at 3.

<sup>21</sup> 47 C.F.R. §§ 1.41 (informal requests for Commission action), 1.87 (modification of license or construction permit on motion of the Commission).

<sup>22</sup> 47 U.S.C. § 316(a).

<sup>23</sup> See *Danbury Cellular Telephone Company, Inc.*, 6 FCC Rcd. 4186, 4188 n.2 (1991).

<sup>24</sup> 47 U.S.C. § 316(a)(1). See *Industrial Telecommunications Association, Inc.*, *Memorandum Opinion and Order*, DA 01-1991 (PSPWD 2001) (determining that a request to remove a frequency from an authorization is more appropriately characterized as a request for modification of a license pursuant to Section 316 of the Communications Act) and *Jim Crinklaw*, *Memorandum Opinion and Order*, DA 01-1783 (PSPWD 2001) (describing the action of removing a frequency pair from a license as a modification of license).

<sup>25</sup> 47 C.F.R. § 90.313(c).

<sup>26</sup> 47 C.F.R. § 90.313(a)(1).

of particular frequency assignments under circumstances that are no longer applicable.”<sup>27</sup> While our discussion above moots this contention, we nonetheless specifically reject any suggestion that the Commission’s grant of the Authority’s Section 337 request inured personally or attached separately to each member of the Authority as of the grant date. To the contrary, in finding the grant to be consistent with the public interest, the Commission specifically noted that the Authority’s plans to use the requested frequencies to develop a modern spectrally-efficient trunked communications system “for the use of its members *and other interested agencies* will likewise serve the public interest by advancing the goals of making the most efficient use of spectrum and enhancing interoperability among public safety entities (emphasis added).”<sup>28</sup> In this connection, we note the Authority’s stated plans to offer communications services to additional jurisdictions and state agencies once its new, “state of the art” headquarters and telecommunications dispatch facility in Hawthorne, California becomes operational.<sup>29</sup>

10. *Conclusion.* We conclude that El Segundo has not provided sufficient evidence to warrant further investigation of the Authority’s use of its licenses. Further, we believe that the South Bay Authority has sufficiently demonstrated that it has satisfied the criteria for Stations WPOJ563 and WPMN535 being deemed fully loaded and not available for further assignment under Section 90.313 of the Commission’s Rules.

11. ACCORDINGLY, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.41 and 90.313 of the Commission’s Rules, 47 C.F.R. §§ 1.41, 90.313, the Petition to Relicense Frequency Assignments filed by the City of El Segundo, California, on June 1, 2001, IS DENIED.

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D’wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

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<sup>27</sup> Petition at 6 n. 6.

<sup>28</sup> See *South Bay MO&O*, 13 FCC Rcd at 23798 ¶ 39. *Accord Opposition* at 3 n.3 (as a policy matter, the FCC should support sharing among political jurisdictions).

<sup>29</sup> See *Opposition* at 3, 7. The Authority states that it has issued \$9.4 million in revenue bonds to construct this new facility, and that it estimates completion in January 2002. *Id.*